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THE VIABILITY OF MORAL DISSENT BY THE MILITARY

by

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## PREFACE and ABSTRACT

This paper is not a political statement, although it contains value-judgments about anti-Islamic rhetoric heard in the 2016 US presidential campaign. There is, however, an unavoidably political element to this paper, since it considers the potential implications of ideas first publicly discussed by candidates competing for the Republican Party's 2016 presidential nomination. While anti-Islamic rhetoric and actions are integral to the scenario described, the characters are fictional and are not analogous to any military or political figure currently in a position of authority or running for office. The political affiliation of the president in the scenario is deliberately unstated. No political party has a monopoly on or immunity from ugly ideas. The Japanese internment, which underpins everything in this paper, was authorized by a Democrat.

The concept for this paper began with what I thought was a wildly unlikely hypothetical of military involvement in the internment of American citizens. The anti-Islamic rhetoric previously mentioned led me to wonder about the moral and constitutional implications of the military's refusal to follow such guidance from civilian authorities, should it be directed.

My knowledge of the Japanese internment stopped at the fact that there was a Japanese internment; I thought the military could not have been involved. This ignorance is embarrassing, but it was shared by all my colleagues with whom I initially discussed this scenario. None of us had any idea about the US Army's role in 1942. We assumed it was a domestic operation because of *Posse Comitatus* and other legal restraints on the use of federal troops domestically.

I was horrified by the details of *Personal Justice Denied*, particularly the description of how abject racism yielded "military necessity" as the justification for interning Japanese-American citizens. Instead of being a farfetched thought experiment, this paper became a straightforward question of "can this happen again?"

This paper explores whether there is ever a moral imperative for the military – primarily senior military leaders – to refuse to obey the direction of civilian leaders. The year in the scenario, 2018, is deliberately within the next presidential administration to highlight the urgency of this question. Security environments, threat perceptions, and moral thresholds can shift more quickly than many people care to acknowledge. Moral debate is not a luxury for other, more secure times. It is easy to dismiss seemingly extreme scenarios on the basis of their rarity, or worse, through exceptionalism and moral superiority. Civil-military relations, ethics, morality, dissent, and even resignation must remain topics of discussion and reflection among military professionals.

The scenario's premise requires acceptance of several assumptions. First, regardless of the exact details, radicalized Muslim citizens conduct a series of domestic attacks sufficient to generate widespread and enduring fear. The president declares a state of emergency and directs the military to intern Muslim citizens domestically until loyalties can be determined and security re-established. Congress backs the President; the Supreme Court declines to intervene, deferring to the Executive in a time of national emergency. While this scenario involves Muslims, similar situations may arise in regard to any ethnicity, ideology, allegiance, or religious affiliation. The potential scenarios are, unfortunately, limited only by one's imagination.

“Stand up amid the general hurricane, thy one tost sapling cannot, Starbuck!  
And what is it? Reckon it.

‘Tis but to help strike a fin; no wondrous feat for Starbuck. What is it more?  
From this one poor hunt, then, the best lance out of all Nantucket, surely he will not hang back,  
when every foremast-hand has clutched a whetstone.

Ah! Constrainings seize thee; I see! The billow lifts thee! Speak, but speak! –  
Aye, aye! thy silence, then, *that* voices thee.”

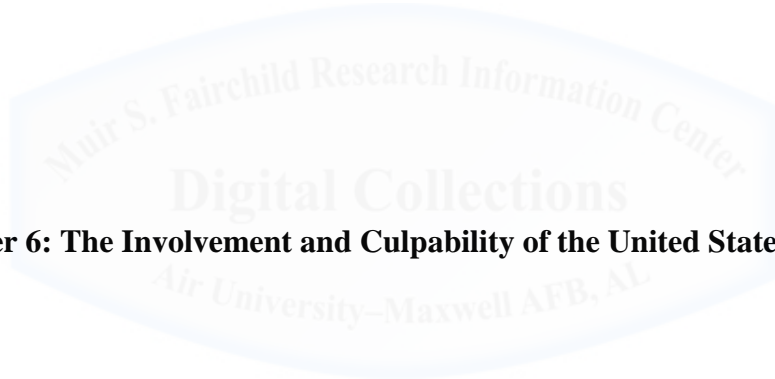
- Ahab, in *Moby Dick*



# **UNITED STATES TRUTH AND RECONCILIATION COMMISSION**

## **CONCLUSIONS REGARDING THE SECOND INTERNMENT OF AMERICAN CITIZENS**

### **Chapter 6: The Involvement and Culpability of the United States Military**



## Part 1: Historical Context

On March 13<sup>th</sup>, 2018, in compliance with Executive Order 14022, the United States military's Northern Command (NORTHCOM) established Joint Task Force – Freedom to plan and execute the internment of Muslim citizens and resident aliens in the United States. The signing of EO 14022 on March 6<sup>th</sup>, 2018, was not an exact recapitulation of American history, but any attempt to understand the military's involvement and culpability in the domestic internment of Muslim-Americans (the Second Internment) must begin with established facts of the internment of Japanese-Americans during World War II (the First Internment).<sup>1</sup> *Personal Justice Denied*, the final report of the Commission on Wartime Relocation and Internment of Civilians, is the definitive accounting of the First Internment. The clarity, honesty, and balance of *Personal Justice Denied* serve as the inspiration for the US Truth and Reconciliation Commission's mandate to understand and illuminate injustices perpetrated by the US government, with a view toward reconciliation and the prevention of additional injustices in the future.

Immediately following the Japanese attack on Pearl Harbor on December 7<sup>th</sup>, 1941, the US Army began establishing regional defense commands with geographic responsibility for various portions of the United States. Western Defense Command (WDC) was the first to be established, with Lieutenant General John Dewitt taking command on December 11<sup>th</sup>, 1941.<sup>2</sup> In the ten weeks after its establishment, WDC assessed the west coast security situation and concluded the Japanese population posed a threat to military and national security. In hindsight, WDC's eventual justification of "military necessity" to evacuate and exclude Japanese-Americans from the west coast was wholly unsubstantiated by any reasonable standard of

military intelligence. General Dewitt's final justification of military necessity was nakedly racist<sup>3</sup> and culminated with a staggering assertion worth preserving in the public awareness:

There are indications that [over 112,000 potential enemies, of Japanese extraction] are organized and ready for concerted action at a favorable opportunity. The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.<sup>4</sup>

The same perverse logic was not applicable to the origins of the Second Internment. Lone-wolf attacks from radicalized Muslim citizens had occurred, though no available evidence suggests a widespread or even nascent conspiracy. However, such ironclad logic and fallacious rhetoric echoes across both Internments, the memory of which must continue to serve as a restraint on threat inflation and arguments of military necessity.

Despite the vitriol of General Dewitt's justification for excluding the Japanese from the West Coast, the military can only share in the blame. Congress and the public also pressed for exclusion of Japanese citizens based on fear and racial hostility. *Personal Justice Denied* summarizes the situation thusly: "The governmental decisions of 1942 were not the work of a few men driven by animus, but decisions supported or accepted by public servants from nearly every part of the political spectrum. Nor did sustained or vocal opposition come from the American public."<sup>5</sup> Western Defense Command's attitude mirrored public sentiment, except the military also wielded the rhetorical cudgel of "military necessity." After extended debate within Western Defense Command and between Secretary of War Henry Stimson and various federal agencies, President Roosevelt signed Executive Order 9066 on February 19<sup>th</sup>, 1942. With additional federal support, Western Defense Command orchestrated the evacuation and exclusion of 120,000 Japanese-Americans from the West Coast.

Historical judgment of the First Internment is marked by consistent, unambiguous condemnation. President Gerald Ford formally terminated the authority of EO 9066 on February

19<sup>th</sup>, 1976, with a statement that the evacuation of Japanese-Americans was a tragedy and a national mistake.<sup>6</sup> President Jimmy Carter recommended establishment of the Commission on Wartime Relocation and Internment of Civilians in 1980. Congress authorized the Commission, which formed in 1980 and finalized *Personal Justice Denied* in 1982.

*Personal Justice Denied* opened by calling the First Internment an “extraordinary and unique” event in American history and a “grave injustice” shaped by “race prejudice, war hysteria and a failure of political leadership.”<sup>7</sup> Congress then passed the Civil Liberties Act of 1987, which contains near-verbatim excerpts from *Personal Justice Denied*, most notably the recognition of “grave injustice,” the acknowledgement that “these actions were without security reasons,” and the description of motivations of prejudice, hysteria, and leadership failure.<sup>8</sup> Congress also apologized on behalf of the nation and authorized reparations. President Ronald Reagan signed the Civil Liberties Act of 1987 into law on August 10<sup>th</sup>, 1988, with public comments on how the internment was a “grave wrong” and “a mistake ... based solely on race.”<sup>9</sup>

After taking office, President George H.W. Bush signed the letters of apology that accompanied reparations to internees and in 1992 he approved an amendment to the Civil Liberties Act to address technical issues with the payment of reparations. In his remarks after signing the amendment, he called the internment “one of the darkest incidents in American constitutional history” and reiterated the need “to do everything possible to ensure that such a grave wrong is never repeated.”<sup>10</sup> Four consecutive presidential administrations condemned the First Internment and, with the support of Congress, the US government took the exceedingly rare step of paying reparations.

Despite this unambiguous acknowledgment of wrongdoing, the collective statements of the government regarding the First Internment are framed primarily in terms of justice, not



morality. *Personal Justice Denied* refers to lapses of constitutional commitment and democratic values. It offers a warning that American exceptionalism can lead to complacency toward “evil-doing” elsewhere and an insistence “it can’t happen here,” even though “it did happen here.”<sup>11</sup> Crucially, while *Personal Justice Denied* questions the decision-making process of the US Army and Western Defense Command leading up to EO 9066, it does not address civil-military relations or whether the military’s active role in identifying citizens as threats and then taking action against them was appropriate for federal military forces.

Likewise, the US Army’s military history of its defense of the Western hemisphere against Axis attack during World War II does not question the appropriateness of the military’s role in the First Internment. *Guarding the United States and Its Outposts* recounts Western hemisphere defense efforts, with a chapter devoted to a factual description of the First Internment. The narrative focuses heavily on the decision-making process of General Dewitt’s staff to justify the exclusion of the Japanese on the grounds of military necessity, with emphasis on external political and public influences supporting exclusion. The extent of scrutiny of the Army’s role, and the closest *Guarding the United States and Its Outposts* comes to self-reflection, is to ask “what were the reasons that impelled the Army to carry out the mass evacuation?” This is settled one sentence later with: “the President and Congress had approved mass evacuation and the Secretary of War ... thought it necessary to carry it out.”<sup>12</sup> Thus ends the military’s scrutiny of its involvement in one of the great injustices in American history.

## **Part 2: The Resignation of the Chairman of the Joint Chiefs of Staff**

The Second Internment differed substantially from the First in that its origins were primarily political, as opposed to being fueled by speculative military threat assessments. As insider attacks escalated, the conservative media began openly questioning whether action

against Muslim citizens might be militarily necessary. This was a continuation of anti-Islamic rhetoric that began during the 2016 Republican presidential primary race and was legitimized following the 2016 Presidential election.

As it became apparent that state and federal law enforcement agencies were unable to quell the attacks, the military began quietly speculating about options for using force domestically. The staffs of Northern Command (NORTHCOM) and the Joint Chiefs of Staff (JCS) held planning meetings to discuss possible courses of action. These discussions were kept highly classified and conducted without direction or guidance from either the NORTHCOM commander or the Chairman of the Joint Chiefs of Staff. In light of the restrictions of the *Posse Comitatus* Act, each staff scrupulously avoided producing records that might substantiate any involvement in the development of plans. No one involved objected, though several of the officers subsequently interviewed by the Truth and Reconciliation Commission later expressed regret over their roles in the discussions.

Aside from this early, unsanctioned, and ultimately inconsequential military speculation regarding the use of Federal troops for domestic security, the most significant difference between the First and Second Internments was the vehement opposition of the Chairman of the Joint Chiefs of Staff (CJCS) during discussions with the President and his senior advisors. The Chairman spent weeks arguing against internment of Muslims, in discussions that grew heated but remained professional. The Chairman's first argument was that internment of Muslim citizens was a disastrous strategy from a purely military perspective, since it would effectively legitimize the Islamic State's propaganda asserting a war on Muslims by the West. The Chairman also predicted enough active resistance domestically, by both Muslims and the general

public, to cause incidents of Federal troops using deadly force against American citizens on more than isolated occasions.

The Chairman knew he had no legitimate basis to step down in protest of flawed strategy. Internment as a strategy was by no means just a matter of military expertise. It was inherently political and appealed to the widespread public sentiment, however misplaced, that the only way to restore security was to take action against the Muslim population, regardless of their citizenship. Strategic disagreements aside, the Chairman's most fundamental reservation was the moral bankruptcy of internment, and damage to the military's standing in society that would result from the military's involvement. The Chairman insisted the basic premise of a mass internment was antithetical to American values, constitutional principles, and basic human rights, citing the government's extensive record of apologies and restitution. The President and his close advisors insisted it was a matter of supreme emergency.<sup>13</sup> Amends could be made after the fact, if necessary.

On March 1<sup>st</sup>, 2018, in a private meeting with the Secretary of Defense, the Attorney General, and the Chairman, the President announced his final decision to order the detention of Muslims domestically until security could be re-established. Given the state of emergency, the Supreme Court would defer to the Executive in matters of national security, and Congressional support had already been secured. The Chairman resigned immediately, calling the decision a catastrophic strategy, a loathsome attack on American values, and an unforgivable national disgrace, all the more so because similar events had occurred, and been roundly condemned, within living memory. The President was not entirely shocked by the Chairman's resignation and already had a successor in mind. The Chairman's successor was confirmed within days, and on March 6<sup>th</sup> the President signed Executive Order 14022.

The Chairman's resignation represented the culmination of a multi-decade scholarly debate on the limits of military obedience to civilian authority, and whether resignation by generals in protest could ever be a legitimate means of dissent. The only comparable prior rupture in civil-military relations was General Douglas MacArthur's insubordination and subsequent firing by President Harry Truman. MacArthur's firing, however, left the civil-military relationship intact and served to reinforce the principle of absolute civilian control of the military. An understanding of the "resignation debate" is essential to comprehend the significance of the Chairman's resignation and the military's subsequent willingness to proceed with the internment.

Samuel Huntington laid the foundation for future discourse in American civil-military relations in his 1957 treatise *The Soldier and the State*. In addition to describing principles of objective and subjective civilian control of the military that have defined the civil-military relations field ever since, Huntington considered two forms of military dissent. The first he called operational and doctrinal dissent, which occurs among soldiers within the military chain of command, due primarily to differences in tactical knowledge or differing situational awareness between commanders and soldiers in the field.<sup>14</sup> As long as the soldier's justification for dissent supports the higher mission or objective of the organization, Huntington claimed this sort of dissent was justifiable.

Huntington's second form of dissent occurs at the level of civil-military interaction. At this level, the authority of the statesmen to decide to go to war is absolute. *Jus ad bellum* is not for the soldier to decide. "Superior political wisdom," Huntington claims, "must be accepted as fact," even in a political environment like Nazi Germany.<sup>15</sup> Within war, however, when a statesman violates objective control – that is, intrudes into Huntington's esteemed realm of

“autonomous military professionalism” – and issues “militarily absurd” orders that fall “strictly within the military realm without any political implications,” disobedience is justified.<sup>16</sup> This is the point at which the constraints of Huntington’s theoretical model become apparent, given how sharply he delineates between political and military expertise. Even if the military agrees widely on apparently clear-cut strategic concerns, statesmen need only claim broader political implications, which cannot then be disputed by the military. Huntington’s overly strict definitions neglect truths about politics and war recognized by Carl von Clausewitz at the dawn of the Napoleonic era in the early 1800s. In practice, as Clausewitz and the Chairman both realized, strategy and politics cannot be disentangled. If civilian supremacy is to continue to be meaningful, dissent cannot be justified based on violations of objective control.

Huntington’s third scenario for dissent is on the basis of illegal or unconstitutional orders from civilian authorities. Under these circumstances, the military must give “considerable presumption of validity to the opinion of the statesman.” If the legitimately functioning branches of government, including and especially the judiciary, agree on the legality or constitutionality of an order, the military must obey.<sup>17</sup> This was the case for the Second Internment, a position the Chairman recognized all too clearly by the end of his final meeting with the President.

Morality is Huntington’s final scenario for dissent. Individuals serving in the military do not and cannot “surrender to the civilian [the] right to make ultimate moral judgments.”<sup>18</sup> If a statesman overrules morality for national interest, hewing to Walzer’s concept of supreme emergency, the soldier should obey “except in the most extreme circumstances.” Huntington offers no clarity about what these circumstances might be; he acknowledges genocide as morally intolerable, but expresses uncertainty about whether there could be countervailing factors against dissent in the face of genocidal orders.<sup>19</sup> In the end, Huntington leaves no meaningful options for

dissent from political guidance, and he is especially unwilling to consider moral dissent in a substantive way.

Shortly after publication of the *The Soldier and the State*, Samuel Finer added to the civil-military canon with a counterpoint to Huntington entitled *The Man on Horseback*. Finer was concerned primarily with the military's growing influence in politics, primarily in the context of the military's institutional protectionism and advocacy for its own corporate interests. Finer criticizes Huntington's definition of professionalism as excessively strict and idealized, and while he recognizes civilian supremacy over the military,<sup>20</sup> he expresses concern about the blurring of lines between political and military institutions and the possibility of "military intervention" in politics. His definition of military intervention is informed by the actions of officers like Douglas MacArthur, who Finer criticizes for "inventing their own private notion of the national interest" and "drawing a distinction between nation and the government in power."<sup>21</sup> Furthermore, if military intervention takes place, it will likely be motivated by selfish corporate interests instead of the idealism of upholding the military's self-appointed "sacred trust" of supervising the Republic.<sup>22</sup>

Despite Finer's concerns about undue military corporate interests, he claims the military is generally reluctant to coerce the government's domestic opponents. "Foreign foes" are the enemy, not fellow nationals.<sup>23</sup> Finer provides British, German, and Turkish examples of domestic military intervention, but tellingly, he makes no mention of the US Army's role in 1942. Since Finer is mostly concerned with creeping military influence in politics and not outright overthrow of the government, his concern apparently does not extend to actions where fellow nationals are defined as potential enemies in a time of war. He also cites an abundance of military interventions motivated by "national interest" in South America, but he dismisses this as

unlikely in countries with free and fair elections.<sup>24</sup> Finer does not specifically address moral dissent. He does, however, add essential context for understanding the risks of the military's divergence from society, as corporate self-interest advances a self-proclaimed and potentially dangerous conception of national interest and constitutionality.

Scholars continued to debate the possibility of moral dissent well into the post-9/11 era, largely within Huntington's original framework of disobedience. In 2009 James Burk criticized Huntington for neglecting the viability and necessity of moral dissent, though he agreed with Huntington's premise that the decision to wage war is always political, leaving the military no space for dissent in the matter.<sup>25</sup> The military's refusal to obey political direction would "pose a constitutional crisis," given that the Constitution "established particular institutional arrangements ... to secure ... the preference for reason over coercion in public policymaking."<sup>26</sup> This arrangement did not put the military into a position of blind, thoughtless obedience, Burk claimed, as long as the military introduced its "expert knowledge into policy deliberations" to help inform political decision-making. If this was the case, the military would be acting with "responsible obedience."<sup>27</sup>

Though Burk's definition of responsible obedience already seems to rationalize away moral dissent at the level experienced by the Chairman, he went on to scrutinize Huntington's analysis of moral dissent. He rightly identified Huntington's failure to provide useful answers about when moral dissent might be appropriate, even with regard to extremes like genocide. Burk criticized Huntington's use of "crude binary terms" to frame his discussion about disobedience and dissent, and then spent the remainder of his essay seeking to define a "protected space" for disobedience. Unfortunately, Burk's "protected spaces" all devolved into examples of moral action within a purely military context. These are valuable and legitimate

examples in their own right, but they offer nothing to differentiate responsible obedience from moral dissent at the level of civil-military interaction.<sup>28</sup> Despite a tortured argument that clarifies dissent within the military chain of command but absolves senior leaders of moral responsibility via “responsible obedience,” Burk concludes with an insight that neatly summarizes the question of moral dissent and seems to offer a way forward: “The ongoing task is to use reason to choose a course of action that is militarily effective and that is justifiable by the values and customs held by liberal democratic societies.”<sup>29</sup> While it does not offer any tangible courses of action, this at least suggests moral or rational responsibility must still be somehow involved.

The nadir of the resignation debate occurred in 2015, as the featured article of a special edition of *Strategic Studies Quarterly*, an Air Force-sponsored publication on national and international security. The author, a US Army major, fully accepted Burk’s premise of responsible obedience and went on to assert that military leaders “cannot claim any legitimate basis upon which to assess the national interest, the public will, or the common good.”<sup>30</sup> In assessing other scholarly views on the possibility of dissent on narrow moral grounds, the author dismissed any protected space for moral resignation as “vanishingly small.”<sup>31</sup> He also claimed that even if there was a morally defensible reason for resignation, there would be no way to do it privately or apolitically. Moreover, this would be the wrong avenue for resignation since “a professional standard upon which to judge the morality of consequences ... would preclude individual resignation and instead dictate disobedience by the officer corps as a whole.”<sup>32</sup> In the end, the author dismissed outright any consideration of moral resignation, claiming such concerns came at the expense of “far more pressing questions.”<sup>33</sup>

Richard Kohn took a blunt but rather more productive stance. While acknowledging the fact that resignation directly assaults civilian authority, Kohn admitted the possibility of “truly



extraordinary or dire circumstances” that might justify resignation.” Contrary to the call for mutiny or mass disobedience in response to immoral guidance, Kohn suggested principled resignation must be done as quietly as possible in order to offer at least some protection to civilian control of the military.<sup>34</sup> Of course, this provides no clarity about what circumstances might justify such principled resignation, but Kohn at least left open the possibility that such a situation merited consideration and could legitimately occur.

While opinions were clearly mixed on the viability of principled resignation, the majority opinion left essentially no space for moral agency among military officers, particularly generals responsible for advising elected leaders. From a constitutional perspective, civilian control of the military is indeed absolute. Burk’s concept of responsible obedience is little more than a minor qualification to Huntington’s original claim that the military never gets to decide when the country goes to war. While proper in constitutional terms, the trouble with responsible obedience is how easily it can be used to absolve the military of any sort of moral responsibility, since the boundary between military strategy and politics is almost entirely subjective. Nobody meaningfully improved on Huntington’s evasion of the question of moral dissent, until the Chairman put it to the test.

The Chairman was deeply conflicted about resigning. He exited the stage as Kohn recommended, quietly and as apolitically as possible. He never entertained the idea of trying to rally support and generate more widespread disobedience. This was a principled decision; he felt that leading a revolt would have been an attack on the State, and the State was worth preserving, if not his role within it. It was also a pragmatic decision. The Chairman had no expectation that he could unify the military in opposition to the internment of Muslims. The military was overwhelmingly Christian and the majority of service members identified as politically

conservative, characteristics not inherently anti-Muslim but that placed the military into relatively close alignment with the President's policies. One other factor concerned the Chairman profoundly. He recognized a widespread sense of animosity toward Muslims throughout the services, largely as a residual effect of twenty years of stalemated war in the Middle East and Northern Africa. In Iraq and Afghanistan this animosity was relatively overt and did significant harm to counterinsurgency efforts. The singular embodiment of this racism was the slur *haji*, used for local nationals and insurgents alike. The Chairman expected this latent racism to be redirected onto the Muslim population in the course of the internment, and he was not wrong. The resulting tragedies are detailed in Chapter 9.

The historical novelty and apparent momentousness of the Chairman's resignation was matched only by its almost immediate irrelevance. In a striking historical similarity to Attorney General Biddle's vocal dissent against the idea of a Japanese internment – Biddle took “coarse and threatening abuse for his unwillingness to join the stampede to mass evacuation”<sup>35</sup> – the Chairman's resignation was treated with utter contempt and vitriol by the conservative press. After a hail of accusations of cowardice and treason, the press moved on and the newly appointed Chairman of the Joint Chiefs proceeded with implementation.

The moral motivation for the Chairman's resignation was unique, but the insignificance of resignation as a threat to civilian control – at least if used in the rarest of circumstances – was foreshadowed by the early retirement of Air Force Chief of Staff Ronald Fogleman in 1997. Fogleman's retirement was the culmination of his frustration with providing “military advice the civilian leadership did not value for whatever reason.” He also resented what he judged to be misguided political decision-making by the Secretary of the Air Force and the Clinton Administration, the details of which, by Fogleman's accounting, compelled him to retire rather

than continue to work in an environment where his expertise was “not valued by those in charge.”<sup>36</sup> Fogleman’s retirement, a sort of preemptive resignation, generated a flurry of debate about the state of civil-military relations at the time. Fogleman’s attitude had hints of MacArthur-esque condescension toward his supposedly unprincipled civilian bosses. However, his description of his role as Air Force Chief of Staff – “it’s a tour, not a sentence” – rings true in the sense that individuals must retain some personal agency to decide whether they can responsibly continue to fulfil their duties. Circumstances and motivations differed, but in each case, retirement in protest and resignation had no meaningful effect on either the short term functioning of the government or the long-term status of civil-military relations. Despite the tensions inherent in the American civil-military relationship, Huntingtonian-professionalism and centuries of near-absolute military deference to civilian control have produced a structure resilient enough to absorb shocks, and even, on occasion, to accommodate behavior considered either petulant or insubordinate.

### **Part 3: Conclusions Regarding the Viability of Moral Dissent**

Principled refusal to obey civilian direction – outright rebellion, or deceptive compliance with no intent to actually obey – is insubordination. There is no legal legitimacy to it so long as constitutionality is defined in terms of respecting the orders of elected leaders whose decisions are supported by all branches of government. There is no Platonic ideal of constitutionality, no higher knowledge the military can claim. The military never questioned its role in the First Internment because by definition it did the right thing.

This all seems perfectly logical, except for the existence of *Personal Justice Denied*.

Moral dissent cannot be reconciled with the military’s constitutional obligations, and yet individuals must retain their autonomy. There are circumstances that, while constitutional in the

sense of being sanctioned by the government, are clearly immoral. Genocide is the default example, but possibilities short of genocide, however undefinable in advance, must surely also exceed a moral threshold. When these circumstances arise, even though personal thresholds will differ, individuals must retain the freedom to opt out. Those individuals will face consequences, as the Chairman did in the aftermath of his resignation. Principled resignation should be exceedingly rare, but it must have its place.

Critics might then ask, if principled resignation on moral grounds is acceptable, why is organized mass disobedience not also defensible *in extremis*? Revolt is unacceptable for a reason Burk gets right. If political representation is the highest good, if the liberal democratic principles upon which the Constitution is based are the most foundational of all the values the United States represents, then revolt is intolerable for the same reason as secession. It is an attack on the state. Democratic societies are capable of implementing morally abhorrent policies, but taking down the state, and the representation of the citizenry with it, is not a legitimate solution. Perhaps there is a point at which a society must be destroyed to save it, to resort to the tragic logic of prior wars. If this is the case, then the moral limits of dissent by the military must remain bounded by faith, if nothing else, in the potential for our constitutional system to correct itself, restore balance, and acknowledge its shortcomings.

*Personal Justice Denied* provides the more fundamental, less legalistic reason the resignation debate failed to meaningfully consider moral autonomy. The discussion was predicated on the self-assurance that “it can’t happen here.” Despite values of honor, integrity, courage, and service, the military is a profoundly amoral institution. If constitutionality consists of enacting the will of the people, as manifested by the actions of elected leaders, the military will simply mirror and sometimes facilitate the inevitable eruptions of fear and injustice history

tells us are inevitable. This is not a problem that happens elsewhere, to supposedly lesser or different societies. It has happened here, repeatedly. Military professionals must understand and reckon with their potential role in this. The Chairman did the right thing, and yet the Second Internment proceeded. Moral dissent should be exceedingly rare. It cannot become a blanket justification for stepping down because of personal disagreements or minor misgivings, but when military leaders possess the clarity to see the nature of events as they unfold, they must retain the freedom to act.



## End Notes

<sup>1</sup> Executive Order 9066 authorized the Secretary of War and designated military commanders “to prescribe military areas ... from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.” The Secretary of War and designated military commanders were also given the authority and direction to take necessary steps “to enforce compliance with the restrictions applicable to each Military area.”

<sup>2</sup> Conn et al, Chapter 2, p. 33. Western Defense Command’s geographic area of responsibility included California, Oregon, Washington, Nevada, Idaho, Arizona, Utah, Montana, and Alaska.

<sup>3</sup> Among other examples, Dewitt’s final recommendation to the Secretary of War on the “Evacuation of Japanese and Other Subversive Persons from the Pacific Coast” states the following: “The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become ‘Americanized,’ the racial strains are undiluted.” (as quoted in *Personal Justice Denied*, Ch. 2, p. 82).

<sup>4</sup> *Personal Justice Denied*, Chapter 2, p. 82.

<sup>5</sup> *Personal Justice Denied*, “Recommendations”, p. 6.

<sup>6</sup> President Gerald Ford, “Proclamation 4417”, 19 February 1976

<sup>7</sup> *Personal Justice Denied*, “Introduction”, p. 3 (extraordinary and unique); “Recommendations”, pp. 8 and 5 (“grave injustice” and “prejudice, hysteria, and failure” respectively).

<sup>8</sup> H.R. 442, “Civil Liberties Act of 1987”

<sup>9</sup> President Ronald Reagan, 10 Aug 1988.

<sup>10</sup> President George H.W. Bush, 27 Sep 1992.

<sup>11</sup> *Personal Justice Denied*, “Recommendations,” pp. 6-7.

<sup>12</sup> Conn et al, Chapter 5, p. 147.

<sup>13</sup> See Michael Walzer, *Just and Unjust Wars*, Chapter 16, “Supreme Emergency.”

<sup>14</sup> Huntington, p. 75.

<sup>15</sup> *Ibid.*, pp. 76-77.

<sup>16</sup> *Ibid.*, pp. 83 (autonomous professionalism) and 77 (all other quoted text).

<sup>17</sup> *Ibid.*, p. 78.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Finer*, pp. 25 (strict and idealized) and 28 (civilian supremacy).

<sup>21</sup> *Ibid.*, p. 26.

<sup>22</sup> *Ibid.*, p. 39.

<sup>23</sup> *Ibid.*, p. 27.

<sup>24</sup> *Ibid.*, p. 36.

<sup>25</sup> *Burk*, p. 155.

<sup>26</sup> *Ibid.*, pp. 156-157.

<sup>27</sup> *Ibid.*, pp. 157-158.

<sup>28</sup> *Ibid.*, pp. 162-168.

<sup>29</sup> *Burk*, p. 171.

<sup>30</sup> *Golby*, p. 36.

<sup>31</sup> *Ibid.*, p. 21.

<sup>32</sup> *Ibid.*, p. 23.

<sup>33</sup> *Ibid.*, p. 25.

<sup>34</sup> *Kohn*, “Building Trust,” p. 282.

<sup>35</sup> *Personal Justice Denied*, Chapter 2, p. 84.

<sup>36</sup> *Kohn*, “The Early Retirement of General Ronald Fogleman”

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